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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046567
Party	Defendant COMPGEEKS.COM COMPGEEKS.COM 2604 TEMPLE HEIGHTS DRIVE , CA 92056
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Submission	Motion to Consolidate
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Attachments	Motion to Consolidate.pdf (6 pages)(47928 bytes)

COMPGEEKS.COM. Opposition Nos. 91167886, and 91170726 (the “Consolidated Opposition”) have already been consolidated pursuant to the Board’s ruling on August 3, 2006.

II. The Circumstances Warrant Consolidation of the Proceedings.

Further consolidation of Cancellation No. 92046567 with the Consolidated Opposition is appropriate because all of these proceedings involve the same parties and common questions of law and fact; such consolidation will save time, effort and expense and avoid unnecessary duplication of effort; and such consolidation will not prejudice or inconvenience either party. *See* TBMP §511; *8440 LLC v. Midnight Oil Company*, 59 U.S.P.Q.2d 1541 (TTAB 2001) (opposition and cancellation proceedings consolidated on Board’s own initiative).

A. All The Proceedings Involve the Same Parties And Common Questions Of Law And Fact.

All of these proceedings involve the same parties and common questions of law and fact. Opposer/Petitioner is the sole party in the position of the plaintiff and Applicant/Respondent is the sole party in the position of the defendant in all of these proceedings. In addition, a comparison among the Petition for Cancellation and the Notices of Opposition filed by the Opposer/Petitioner highlights the commonality of issues:

On information and belief, Opposer’s use of its mark COMPUTER GEEKS for computer-related goods and services is prior to Applicant’s use of COMPUTER GEEKS ... (Notice of Opposition re Serial No. 78/380,877 at 3.)

On information and belief, Opposer’s use of its mark COMPUTER GEEKS for computer-related goods and services is prior to Applicant’s use of COMPUTER GEEKS ... (Notice of Opposition re Serial No. 78/258,431 at 2.)

Petitioner believes it adopted and has used the mark COMPUTER GEEKS for various computer goods and services continuously since prior to Registrant’s alleged date of first use of its mark. (Petition at 3.)

See also S. Industries Inc. v. Lamb-Weston Inc., 45 U.S.P.Q.2d 1293 (TTAB 1997) (consolidated proceedings involved the same mark and virtually identical pleadings). As Opposer/Petitioner's pleadings clearly point out, the allegation of prior use of the COMPUTER GEEKS mark is a primary factual issue in all the proceedings.

Furthermore, Opposer/Petitioner explicitly refers to the pleadings of the Consolidated Opposition in its Petition for Cancellation and bases its alleged damage on the Consolidated Opposition:

Insofar as the subject Reg. No. 2,499,396 is asserted by the Registrant ... as a defense to the pending Consolidated Opposition, then Petitioner believes it will be damaged by the continued registration of the mark of 2,499,396. (Petition at 3.)

Opposer/Petitioner's conditioning its basis for the Petition for Cancellation on an issue raised in the Consolidated Opposition further demonstrates the interrelationship among the proceedings which makes consolidation appropriate.

B. The Savings in Time, Effort and Expense Gained From Consolidation Substantially Outweigh Any Prejudice or Inconvenience That May Be Caused.

Consolidating the proceedings in this case will save significant resources for both the Board and the parties. Because the underlying facts, claims, and parties involved are substantially identical among the proceedings, the discovery and pretrial issues will be identical or nearly identical. If these proceedings are not consolidated, two different interlocutory attorneys within the TTAB will have to commit substantial time and resources to evaluate and determine substantially identical legal issues in the context of identical facts for identical parties. Consolidation is provided for under the Federal Rules and TBMP to prevent such duplication of effort and inefficiency.

Moreover, no undue prejudice or inconvenience will result from consolidation. The testimony period in the Consolidated Opposition has yet to open, much less close. *Cf. Lever Brothers Co. v. Shaklee Corp.*, 214 U.S.P.Q. 654 (TTAB 1982) (consolidation denied where one case just in pleading stage and testimony periods had expired in other). Further, the discovery period in the Consolidated Opposition is still open. It is true that the discovery period in the Consolidated Opposition is scheduled to close in February. However, had Opposer/Petitioner filed the cancellation action in a timely manner when it was in a position to do so, the parties would still have been in the early stages of the discovery period in the Consolidated Opposition. Specifically, Applicant/Respondent first raised the Affirmative Defense upon which Opposer/Petitioner bases its Petition for Cancellation in its Answer to Notice of Opposition filed on January 13, 2006. The deposition to which Opposer/Petitioner refers in its Petition for Cancellation occurred on May 23, 2006. Although all the alleged bases for its Petition were in place, Opposer/Petitioner waited five months before filing its Petition for Cancellation on October 23, 2006. Such delay should not now force both parties as well as the Board to relitigate the same issues in a different setting.

III. Request For Resetting Discovery and Testimony Dates.

Applicant/Respondent Compgeeks.com further requests that discovery and testimony dates in the consolidated proceeding be set according to the schedule in Cancellation No. 92046567, which is set forth below:

Discovery period to open:	November 23, 2006
Discovery period to close:	May 22, 2007
30-day testimony period for party in position of plaintiff to close:	August 20, 2007

30-day testimony period for party
in position of defendant to close:

October 19, 2007

15-day rebuttal testimony period
for plaintiff to close:

December 3, 2007

IV. Conclusion

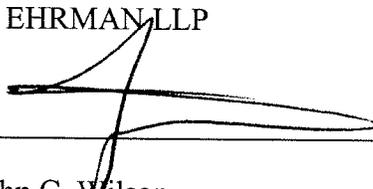
For the foregoing reasons, Applicant/Respondent respectfully requests that the Board consolidate the above-referenced proceedings and set the discovery and testimony dates as set forth above.

Respectfully submitted,

HELLER EHRMAN LLP

Dated: February 6, 2007

By: _____

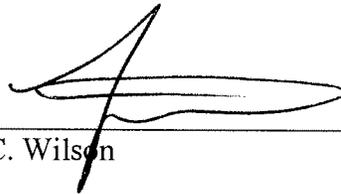

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing MOTION TO CONSOLIDATE OPPOSITION AND CANCELLATION PROCEEDINGS was served upon the attorneys of record for Opposer/Petitioner by depositing a copy thereof in the United States Mail on February 6, 2007, first-class mail, postage prepaid, in an envelope addressed as follows:

Jane Shay Wald
Irell & Manella, LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067

A handwritten signature in black ink, appearing to read 'John C. Wilson', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'J'.

John C. Wilson